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O B S E R V A T I O N S

On a late Publication, entitled

“ A D I A L O G U E

“ O N T H E

“ A C T U A L S T A T E O F P A R L I A M E N T , ”

A N D A L S O O N A T R E A T I S E E N T I T L E D

“ F R E E P A R L I A M E N T S . ”

With Remarks on

Mr. Hatsell's Argument concerning Annual Elections,

A N D O N

The Letter to Mr. Sinclair.

“ The general story of mankind will evince that settled authority is very seldom resisted. — Gross corruption or evident imbecillity is necessary to the suppression of that reverence with which the majority of mankind look upon their governors, on those whom they see surrounded with splendour and fortified by power.” *The Rambler*, No. 50.

“ One may generally observe, that the body of the people has juster views for the public good, and pursues them with greater uprightness, than the nobility and gentry, who have so many private expectations and particular interests which hang like a false bias upon their judgements, and may possibly dispose them to sacrifice the good of their country to the advancement of their own fortunes ; whereas the gross of the people can have no other prospect, in changes and revolutions, than of public blessings which are to diffuse themselves over the whole state in general.” *Addison's Remarks on several Parts of Italy, on the article ' Pavia and Milan . '*

“ When, on the authority merely of their experience, without argument or proof, Statesmen thwart regulations drawn up on principles of public good, and to counteract particular interests, I shall be apt to suspect, with the vulgar, that their opinions are solely formed on sinister views.” *Observations on a pamphlet entitled Thoughts on the present Discontents. By Mrs. Macaulay : 1770.*

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N. B. The references added by the editor are distinguished by an E. prefixed.

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OBSERVATIONS,

OBSERVATIONS, &c.

NOTHING, of general importance to a nation, has ever been attempted without encountering the contempt of the unreflecting, the arts of the interested, and the bitter censure of those in whom passion predominates over reason and the regard of public utility. The question of REFORM in the REPRESENTATION; on a great and liberal scale, could not escape from the distinguishing attendants on superior excellence. It could not long be without professed antagonists. Two have lately appeared: and, as they are imagined to include whatever can be said most plausibly or most strongly on that side of the subject, I shall examine, without prologue or apology, their several arguments. I mean the '*Dialogue on the actual State of Parliament*,' and the Treatise which is entitled '*Free Parliaments*:' — of which the first may be called the sword, and the other the shield, of the anti-reformists. The one splendid; the other, though not of heavenly panoply, yet, like those defences used by a species of gladiators, well calculated to entangle an opponent. The first being written in the form of dialogue, better adapted, I apprehend, to the communication of clear and familiar truths than to the impartial developement of a system so refined as that which it insinuates, I shall endeavour to reduce the heads of both to one simple form, noticing in what they agree and in what they differ, and then attempt to appreciate their respective merits.

The author on '*Free Parliaments*' has very properly reduced his positions to a *table of contents* prefixed to his tract. In that table he includes both his assertions and the instances which he designs to serve as proofs. I shall confine myself at present to stating the assertions: the proofs will be of course considered in their proper place.

That new parliaments every year, or oftener, are no part of the constitution by common-law; * that they were not meant to be enacted or confirmed by the statutes of Edward III. † that frequent elections would be dangerous, and inconsistent with the business of the nation; ‡ that the idea of a general or an equal representation is not constitutionally § grounded; ¶ that the restoring it to its extent, or establishing an universal exercise of elective right, would produce tumult and confusion; † are principles which, I think, pervade both publications. The Dialogue, however, is characterised by something not so openly defended or explained with such nicety in the other. It contains — (for the side, to which the advantage in every interlocution is given, forms the character of the piece) — it contains an elaborate vindication of the influence of the crown and aristocracy in the house of commons, and the benefit of the oligarchical consequence derived on members of that

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house.

* P. 9 on Free parliaments.

† P. 13.

‡ P. 26-7.

¶ P. 32 of the Dialogue.

§ P. 30 on Free Parliaments.

† P. 34 of the Dialogue. P. 37, Free Parliaments.

house by overgrown property and family connections. This kind of importance, however, the author of the *Free Parliaments* does not think sufficiently great. The *Dialogue*, faithful to the motto prefixed, goes the length of urging throughout, that the deviations from the constitutional idea of the house of commons being the representative of the commonalty, the abuses which have perverted its 'original intention,'** are really national benefits. That the house of commons owes its whole efficiency to being no longer the representative of those from whom its very name is received. That the practicability of a reform, which would amount to a renovation, is almost an inadmissible idea; its inconveniences great and instant; its efficacy remote and uncertain; and that the benefit of an inferior degree of reform is hardly worth the experiment. This last opinion there seems much reason for admitting: and hence, probably, as it has been observed, some considerable towns appear disinclined to receive the benefit of representation on a plan of partial reform.

The first point, that new parliaments every year are no part of the original constitution, the author of *Free Parliaments* has very slightly dispatched: and, instead of what might have been fairly deduced in proof of the ancient exercise of this right, before feudal tyranny eclipsed the constitution, we are entertained with the arbitrary innovations of that oppressive system which was ever incapable of being allied with British freedom. The heterogeneous mixture (for union it could not be of principles thus discordant) was maintained only by force, as by force it had been effected. Yet these new assemblies yearly may be traced from the general practice of German communities * long before the

** P. 22, Dial.

* ' LAMBARDE, who was no zealot of a party, nor actuated by any factional motive, but a cool, diligent, and judicious, antiquary, traces the origin of parliaments, in his book entitled *Archion*, from the old Germans, through the Saxon and Norman governments, to the times approaching his own; and cites a number of histories and records, in which such words of universality are used, as clearly demonstrate that all the commonalty of the realm had, what they certainly have not forfeited and could not surrender, an equal share in the legislature. "De majoribus rebus consultant omnes," says TACITUS: "ealra witenas," say the SAXON princes: "convocavit clerum et populum," says M. PARIS of HENRY III. and again, "omnes clericos et laicos totius regni;" which words are also used in 4 WILLIAM I. l. 58. "tote la commune," says the statute 14 EDWARD II. and, if these authorities were not sufficient, a thousand more might easily be adduced to warrant the conclusion, which Lambard forcibly draws; that every man is said to be bound by that which doth pass from the parliament; because every man, from the highest to the lowest, is there either in person or by procurator." I cannot refrain from adding a very strong passage from Lord-Chancellor WEST's *Inquiry into the Origin and Manner of creating Peers*: "It is no wonder," says that learned writer, "that it was always thought necessary, as well as reasonable, to consult the whole king-

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the period whence he derived his evidence. They may be traced in our annals with greater clearness than could have been expected, considering the inroads of time, aided by the malignant subtilty of despotism.

Now for the effect of the ancient statutes. It is maintained, that the design of the act of 4 and 36 Edw. III. was only to provide for the sitting of parliament without such long intermissions as afterwards took place, and by no means for sessional re-elections, every year or oftener. And yet there is direct proof, from the writs of summons for every year, (three excepted,) from the 34th to the 50th; for two, out of those three, strong presumptive evidence; and a general presumption even for the only one remaining. * If the intent had been merely that the king should not act without parliament, would these new writs have been so regularly repeated? And, farther, from the 15th Ed. II. to the 15th Ed. III. for twenty years successively, evidence has been happily preserved of annual elections, with one year only excepted, and that probably an omission, as in the preceding and subsequent years there were two elections for each, agreeably to the plain intent of the clause,—‘once every year, or oftener if need be;’—the force of which expression can only be evaded by giving it a meaning absolutely absurd and incredible. By king Alfred’s laws parliaments were held twice a year. The same by Edgar’s. Prorogations, for continuing the same parliament, without re-election of the representatives of the commons, appear to have been a comparatively recent usage, unknown to the simplicity of our fathers; a baneful innovation, introduced by the ever-wakeful subtilty of that power which always will encroach on any unguarded side of public freedom. A parliament, sitting after the year of its election was expired, must be first proved to have been *customary* in those days. The proof, so far as it reaches, (and it extends pretty far before and after the statute of Edward III.) is directly the reverse.

One precedent is attempted, by the author of ‘*Free Parliaments*,’ from the year 1397; and this a very *unfavourable* † one; as the parliament

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“*dom* in parliament upon all affairs and demands which were extra-feudal
 “and of a general concern; and, therefore, that great king, EDWARD I.
 “was so sensible of the justice of this way of proceeding, that he inserted,
 “in his writs of summons to parliament, as a *first principle of law*, and as
 “his reason for summoning parliaments, *That, in every affair, which related to the whole kingdom, the consent of the whole kingdom ought to be required.*” “*Lex justissima, ut quod omnes tangit ab omnibus approbetur,*”
 “are the original words.” Addition, by the editor, from p. 10 and 11 of
 “*A Letter to a patriot Senator.*” London, 1783.

* ‘*Annual Parliaments*,’ by Granville Sharp, Esq. p. 46–7. 73, note; 74. and his *Declar. of the People’s natural Right*, &c. n. 159–170.

† Note by the editor. This is not the only *unfavourable* circumstance attending the boasted precedent for prorogations in 1397; and the unlucky citer of it ominously stumbles on the threshold, as it were, of his argument, (this being the very *first* precedent, it seems, he is able to find,)

ment met the 17th of Sept. 1397, and held its second session the 29th of January, 1398. If this be a proof against annual parliaments, the

find,) erroneously citing the year 1397 as the "11th of Richard II." whereas better authorities inform us, that it was much later in that reign, even the 21st year, and consequently that "*all the statutes*" in question "*were*" NOT so "*recent in every one's memory*," by ten years, as this writer would insinuate. But, what is still more *unfavourable* to his *first precedent*, the year 1397 was the fatal year wherein that unfortunate monarch, (K. Richard II.) by rendering himself *absolute in power*, ceased to be a *legal king* in this limited monarchy; and, of course, through his own perjury and disloyalty to the state, justified the subsequent rebellion, which, in defiance of his boasted *firmness*, thrust him from the throne! For this ill-advised obstinate monarch, in that very year, (1397,) (as a prelude to his own destruction,) "*plainly manifested the design he had formed to usurp despotic power*," &c.—(See *Acta Regia*, p. 190.) — And "*had so well ordered all matters before hand, that he could not fail of having a parliament at his devotion*," &c. (Ibid.) — "*The parliament, THUS PACKED, assembled with a disposition to do every thing the king could wish*." (Ibid.) — We need not wonder then to find, in such a fatal year of *misrule* and royal treachery, the first baneful example of a *session of parliament without re-election*: but, is the example *favourable* to the pretended right of *prorogations* from year to year? Surely not! It proves only that the citer of it is either totally ignorant of the true distinction between a *legal precedent* and a *corrupt example*, ("*corruptela*," which the law abhors, and warns us to reject all such in the selection of examples for the proof of any legal use or custom — "*Malus usus abolendus est*,") or otherwise, he is miserably deficient in the first and most necessary principle amongst men, *common honesty*! To such a pitiable dilemma his *first precedent* has inevitably reduced him! And his 2d, 3d, 4th, &c. examples are all equally *corrupt* and exceptionable; — they are baneful consequences of the *despotic* (and therefore illegal) rule of the two preceding TUDORS, and are not less repugnant to the *ancient constitutional usage of English parliaments* than to the *natural rights of man*! — Now "*what shall we say to THIS SPECULATOR*," (to use his own language in "*FREE PARLIAMENTS*," p. 10) "*if, upon a slight examination into the authorities, we find that*"—his doctrine (of "*THE PARLIAMENTARY CONSTITUTION OF ENGLAND*") — "*is not founded in truth! that it is an imposition upon the public?*" &c. — "*I am afraid that such discovery will give us cause to arraign HIS motives; for it is barely possible to ascribe all that HE hath written upon this subject to IGNORANCE*." Yet this unwary advocate for iniquity has attempted (though, indeed, it is "*no marvel*; for Satan himself is transformed into an angel of light. Therefore [it is] no great thing if his ministers also be transformed as the ministers of righteousness, &c." has attempted, I say) to delude unwary readers of parliamentary information by covering his system of *corruption* and *treason* to his country with the false title of "*Free Parliaments*": but at the same time he has prudently concealed his name, the only mark of wisdom which either he, or his colleague in misrepresentation and delusion, the author of the "*Dialogue on the actual State of Parliaments*," have manifested in their respective writings;

the lord-mayor of London is not an annual magistrate, being chosen the latter end of one year, and sitting to the latter end of the next.

The next instance is deduced from 1 E. VI. 1547, an hundred and eighty-three years from 36 Ed. III. and those, in great part, years of desolating contest between the faction of Lancaster and that of York.

Without attending, therefore, to the observations on the following reign of Elizabeth, impartial judgement may rest assured, that *the ancient custom* of England was to elect *yearly* [and "*more often*" when occasion required]* the representatives of the commonalty; and that such were the parliaments intended by the statutes in question.

On these proofs, and with this sentiment of their force, I had left the point in my first edition of this little tract: but having seen, in the Monthly Review, Mr. Hatsell's** arguments and opinion considered as of greater weight on the other side of the scale than my ideas can represent them to me, and, it being the opinion of a learned and most respectable friend that they ought to be distinctly examined, though we concur in thinking them invalid, I shall entreat the patience and attention of my reader to the farther discussion of this subject.

Mr. Hatsell grounds his *opinion*,† that the intent of the statutes of Edward, and the antient law and constitution of the kingdom, require parliaments to *sit* once at least in every year, but not that they should be *annually*, or *oftener*, *elected*, upon the statutes passed by the long Parliament, commonly called the Triennial Bill, 1640; the statute of 16 Cha. II. ch. 1; the bill of rights; the 6th W. & M. ch. 2; the practice since the reign of Elizabeth; and the presumptive opinion of lawyers and other leading men in parliament.

The long Parliament, as appears from the historical fact, and the very name, was more anxious to prevent the crown from acting without

writings; whereby indeed they effectually secure their persons from the just detestation of all honest Englishmen.

The *unconstitutional principles* of both these writers, as well as the measure of their *literary abilities*, are pointedly exposed also in an admirably well-written tract lately presented to the Society for constitutional Information, under the following title — "*A Letter to the Author of a Pamphlet entitled 'FREE PARLIAMENTS.'*"

* Addition of the editor. The words — "*if need be*," — in the act of 4 Edw. III. were censured, indeed, by the learned Blackstone, as "*loose and vague*;" but his gloss was unanswerably confuted by a remark on the *necessary grammatical construction* of the whole sentence, viz. that the said *discretionary* words were by no means applicable to the main purpose of the act, (the holding *annual* parliaments,) but merely to the remaining part of the sentence, viz. "*and more often*," which (compared with *the usage of the times*, proved by the writs) *unquestionably* fixes the true meaning of the act in favour of *sessional* elections. See *Decl. of the People's Rights*, &c. p. 165-8, n.

** In his "*Precedents of Proceedings of the House of Commons*."

† P. 196-8, in the notes. — *Addition by the Editor*. The supposed *opinion* of Mr. Hatsell, in the last-cited notes, as compendiously stated above by Mr. Lofft, is a much more favourable construction than Mr. Hatsell's *own words* will really warrant.

out parliaments than to enquire into the limits of their own delegation. And, with reverence be it spoken, (and in this I believe myself supported by the judgement of some who revere the wise and virtuous part of their conduct as much as I,) those great men were probably not ignorant of the right of the people to new yearly parliaments, but went on the fatal idea of the necessity of keeping the power in their own hands, for fear it should fall into the hands of others, less willing, or less capable of contending with the encroachments of prerogative; thus sacrificing a fundamental public right to the baneful doctrine of expediency.

In 1667, the parliament, falsely tender of the misconceived honour of the crown, passed the repeal of the former triennial act of 1640, though as lord Clarendon (after some ill judged expressions, which his bias to prerogative often occasions him to use) observes, with much candour, that * 'since it was evident great inconveniences had befallen the kingdom by the long intermissions, that could not have happened if there had not been some neglect of what had been settled by former laws, there was some colour of reason for those changes by which the crown could in no case suffer but by its own default.'

The parliament, however, having repealed that act which provided for the issuing of writs of election, even without the king's consent, if withholden beyond the time limited by the act, proceed by a new law; reciting, in the third section, thus: 'Because, by the ancient laws and statutes of this realm, made in the reign of king Edward the Third, PARLIAMENTS are to be HELD very often, be it declared and enacted, that, hereafter, the SITTING and HOLDING of PARLIAMENTS shall not be intermitted or discontinued above three years at the most;' and concludes, 'but that within three years after the determination of the present parliament, and so from time to time, or, if there be occasion, more often, (referring manifestly to the similar words in the statute of Edw. III.) your majesty, &c. do issue out your writs for calling, &c. another parliament, to the end there may be a FREQUENT CALLING, assembling, and holding, of parliaments.'

The CALLING here mentioned, which is to be *frequent*, evidently is used in its proper parliamentary sense by issuing *new writs of election*, though it gives far less than the constitutional rights declared by the statute of Edward III. which statute Milton considers as still in force, and which is now in force for reasons to be explained, and the use of the word, declared in this act of Cha. II. seems probably intended to intimate the precedent constitutional right of the people to the *frequent holding of parliaments*: since, had they meant to introduce a new privilege, 'be it enacted' would have been the proper term, without prefixing the word '*declared*.' It is also of some importance that, in so short an act, the words *sitting* and HOLDING of PARLIAMENTS are both used; whereas, had it been intended to secure merely a *session* once in three years, *sitting* would have been exclusively applied by itself. Of the import

* Book III. p. 221.

import of the word 'holding,' I purpose to say more hereafter; at present I shall only remark this parliament seems to have had a sense, though not the most accurate and constitutional, of the right of the people to frequent NEW parliaments, but, after having been so courteous as to surrender to the *discretion* of the crown the right which touched themselves, of frequently *sitting*, it is no wonder they are indistinct in what regards the RIGHT of their CONSTITUENTS FREQUENTLY TO ELECT.

I omit noticing, in its order of time, the bill of rights, and shall first speak to the act of the 6th W. & M. ch. 2. by which it is *declared*, in the preamble, that, 'by THE ANCIENT LAWS and statutes of this kingdom, FREQUENT PARLIAMENTS OUGHT TO BE HELD, and that frequent and new parliaments tend very much to the happy union and good agreement of the king and people.'

On this I have to observe, that, by the words, 'THE ANCIENT LAWS and statutes,' the reference of the preamble to the *common law right*, and to acts of parliament as *declaratory* thereof, cannot well be overlooked or controverted; and they give '*frequently held*' its proper force, by subjoining a declaration of the mutual interest of the crown and people in frequent *elections*; and here the ingenious author of the letter occasioned by the pamphlet, intitled, 'Free Parliaments,' will give me leave to question the validity of his reasoning, on the word *new* being brought in by the second clause, as if *frequent sittings* had been the exclusive object of the first. Had the act been passed when frequent sittings implied *frequent elections*, the parliament ending with each session, then, indeed, the word *new* would have been unnecessary; but a corrupt usage having been introduced, the word *new* was become necessary; not by way of creating a privilege of new elections, but to explain the words which preceded, and which, to our ancestors, happier in that important respect, the use of centuries would have sufficiently explained; and thence I apprehend it is, that the word 'new' is not in the statutes of the third Edward. It was implied, in the very notion of *holding a parliament* every year or oftener, that it must be at least yearly elected. And the use of the new parliaments, mentioned in the act of William, perfectly corresponds with the object declared in the statute of 36 Edw. III. ch. 14. The general preamble whereof is; 'to the amendment of the outrageous grievances and oppressions done to the people;' and then in the particular clause, 'for maintenance of the said articles and statutes, and redress of divers mischiefs and grievances which daily happen, PARLIAMENT SHALL BE HOLDEN EVERY YEAR, as before was ordained by statute.' Now, yearly deputations were certainly, then and always, well adapted to the redress of grievances, by the constant resort they must afford to the choice of the people; who may otherwise suffer evils of which neither themselves nor their representatives can be timely and effectually informed; and, instead of a relief to their estate, and a remedy against outrageous oppressions and grievances, daily happening, the good people of England would have felt themselves released from the

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rod to be chastised with scorpions, had the art of rendering parliaments perennial been then practicable; but to form so much as the imagination of it was reserved for other times.

Let us now proceed to the Bill of Rights, which declares, that, 'for the redress of all grievances, and for the amendment, strengthening, and preserving, of the laws, *parliaments* ought to be *held frequently*.' On this article I must presume to say, that I cannot speak in the strong and extensive terms of panegyric, which Mr. Hatsell and many respectable persons have employed in praising this bill. However much I may agree that in this memorable act we ought to have found 'a settled constitution,' I fear we find little more than an imperfect enumeration of particular and notorious grievances, the illegality of which is asserted; but, in providing future securities, or explaining the extent and limits of those formerly provided, it is, as our admirable female historian has noticed, remarkably loose. How vague, in this particular and great point, is by Mr. Hatsell himself acknowledged; and yet this '*above all*' is to explain the intent and meaning of the STATUTES of EDWARD the THIRD. The reasons have been given why no explanation seems to be deducible from the other acts, but what rather supports than invalidates the construction of the words in question to be for *sessional parliaments**, yearly or oftener elected according to the ancient laws and right of the people; and, let it not be imputed to petulance against the writer, or perverseness on the subject, when I declare that, to my idea, the Bill of Rights is even less adapted, than any of the other acts, to the point which it is brought by the author of the precedents to prove; were I to contend for any thing to be derived from it, I should sincerely think it favoured the principle of frequent *elections*; but, with regard to these, I think the evidence so much better established as not to need an elucidation so defective.

Another ground taken by Mr. Hatsell, is that of usage, commencing two hundred years later than the statutes of Edward; which surely no principle of law or reason will allow to counteract the admitted usage of two centuries, and more immediately after the statute, and of ages prior to it. From this precedent, concomitant and subsequent usage, agreeably to right, must the construction be drawn; and not from an abuse which dared so very long after to innovate upon law, prescription, and sacred justice. Even if long or short parliaments were taken for matters of indifference, and not one the most just and salutary, the other the most pernicious of establishments, a prior and continued usage must have guided the interpretation, and the meaning of the act could not have been made to depend on a practice of innovation so much posterior.

There

* I use the word as Mr. Sharp has done in his several valuable tracts on this subject, judging it a more exact and constitutional expression than annual parliaments. Sessional parliaments can never have less than annual elections; they may on some emergency have more, and thus parliaments would be *holden once a year*, which is equivalent to *annually*, or (on some great occasions) *more often* elected.

There remains the head of argument from the presumed opinion of lawyers and great men in parliament. The reply to this, my remarks on the act of the long parliament, I trust, have in some degree anticipated. Be the declaration of lawyers, and leading men in the house, how full soever, that *parliaments need not to be elected but only to sit yearly*,* it will be but the declaration of trustees on the measure of that power which they might suppose to belong to them; a measure never to be determined on their opinion in their own favour. But nothing is offered beyond negative inference. Because they did not call in question the validity of their sitting longer than a year from their election, we are desired to conclude for the validity of their sodoing. Neither did Charles call in question the validity of his claim to ship-money. If it be said, that, however the body of the house might assume a length of duration greater than constitutionally belonged to them, or accept it from the crown, by sitting on prorogations beyond their term, yet some disinterested members would have spoken against it; the answer is obvious, we have no such full information of the parliamentary history of that period as might assure they did not: and, if we had; no more would follow than simply this, that men, occupied by the attention to great and arduous objects for the defence of themselves and the people against the encroachments of the crown, did not take the retrospect which they should have done to the boundaries of their own delegation, which a lapse of years had somewhat obscured. And, if the people in a short time lose sight of essential liberty by disuse, little can it be wondered that power forgets the duties which it is not taught to remember by habitual exercise.

After all, the short parliament which met in April, 1640, and made way for the long in November of the same year, seem to have constitutionally expressed themselves, when they mention, as '*a grievance that RELATES TO ALL and is a great cause of all the former, the not HOLDING OF PARLIAMENTS every YEAR, according to the LAWS and statutes of the realm.*' They do not say the not sitting, but *holding*, as do the statutes of Edward the Third. Now, whoever reads the title prefixed to each parliament, in the Statutes at large, will observe these words, '*at a parliament holden,*' or '*begun and holden,*' on such a day and year, '*and continued and prorogued;*' or, in later times, '*continued by diverse prorogations.*' So that the *holding* refers to the first commencement of *sitting* from election; it is not said to be holden the first, second, and third, year; but holden on the first session, the constitutional limit of its duration; this distinction of terms appears to be conformable to the long and close chain of evidence in support of *sessional elections*; so that to say parliaments shall be holden yearly, seems to me to carry the sense of being elected yearly, which, to say they shall yearly sit, would not so properly have done.

If it should be objected they are holden in fact when they sit by prorogation, so that no limit to a session can be deduced from the application of this word; let me answer, the term *prorogation* being appropriated, in our language, to this one purpose, we must find its sense in the original and proper use of it; which is to signify continuing the existence

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of

* See note in p. 5. (Editor.)

of any thing, which otherwise must naturally or civilly have expired. Thus the great historian of Rome, speaking of occasional extensions of the trust of their annual magistrates, mentions their government being prorogued*. This, however dangerous, was done at least by those who had right to do it, the *people*; who renewed in the same hands the charge they had committed. With us a power, transcendently more important, the legislative, is continued beyond its limits, not by those who gave, but by its own will, or the will of the executive, which cannot, for this purpose, be a constitutional authority. Perhaps my meaning will be more clearly expressed, by saying, that at present, *frequent sessions* there are, but not *frequent parliaments*; and that, in right and ancient usage, for ages, a session implied a new parliament, as a year's duration implied, of course, the expiration of a session.

With respect to the dispatch of business, (the perpetual pretence,) every prorogation, by modern custom, though not by right, makes a *new session*, and bills not passed must be recommenced; but, with regard to the right and interests of the people, is the difference; yearly sessions for a century, should it happen, make not a *new parliament*, without *new election*; when, therefore, it is affirmed, that PARLIAMENTS should be FREQUENTLY HELD, the constitutional implication is necessary, that they be as FREQUENTLY ELECTED; and thus the Bill of Rights, with the other Statutes, infers *electing* as well as sitting.

Lord Shaftesbury's objection, in 1677, I still think, appears to have proceeded on the illegality of a parliament, of which one great integrant part, the house of commons, had been continued for above a year without *new election*; at least I can make no other interpretation that seems adapted to his understanding and discernment. For, supposing the *session* simply to be the point on which it rested, could the crown's breach of trust, by not assembling them within the year, prejudice or give colour to call their right in question when assembled? A right to sit yearly had not been forfeited for the future, nor could colourably be so imagined, by their exercise of it being hindered the year past; but the *right of the people, to elect them yearly*, was infringed by *accepting to meet, without new election, at a period beyond the year*; and one essential part of parliament, thus continued beyond its time, was an argument against the legality of the session by no means palpably absurd, a ground alone fit to support the superstructure.

To say that 'all the wisest and best-informed men, from Elizabeth to the present time,' have concurred in opinion, that the statutes and ancient laws require only *annual sessions*,† not *annual elections*, is a very large assumption; when it is known that men, in parliament and out of it, whose political wisdom will not lose by comparison with that of the supposed authorities on the other side, have declared their opinion, that the yearly election, or oftener, of parliaments, is not less required than the sitting; and when an author, who has taken the most candid and assiduous pains to be thoroughly informed by the contemporary evidence

* Prorogatum est imperium.

† See note in p. 5 & 9. (Editor.)

evidence of the writs, the true sources of information, has given those proofs already represented of the series of sessionally-elected parliaments, of which I could support myself by precedents, reason, and the common sense of mankind, by saying, that such an usage (had the obvious and natural construction of the words not been for sessionally-elected parliaments) must in law, and the principles of interpretation, have governed and derived the meaning even of doubtful or unfavourable expressions. When words are to be construed most liberally, consistent with a fair import in favour of public right and freedom * ; most strictly within the limits of the trust of the enactors; if *calling* and yearly *holding of parliaments* refer properly to election and not merely to session; if the steady usage of years after the act, which could not be for convenience of the crown, but in conformity to the sense of the declaratory statutes, be a weighty argument; if the use of centuries before, though with occasional infringements, which called at length for the re-establishing statute; if the general, though gradually relaxed, usage of above two centuries following be a decisive confirmation of the obvious construction of the words; *new parliaments every year* at least have all this evidence, and more to support them, opposed to a contrary custom introduced *too late* to justify any inference of construction from it, in the *worst* times, for the *worst* ends, and with consequences the most fatal.

Next, therefore, the supposed danger of such yearly [or more frequent] elections comes to be considered. The objection is, the people want virtue: || that is, the small number of the present electors are easily corrupted when the purchase of their votes once given is a seat in parliament for seven years. The majority of electors, under such circumstances, will ever want virtue. But of yearly elections, by equal and general suffrage, what would be the consequence? The political virtue of the people would be secured from temptation. Where numbers and frequency of recurrence render the attempt desperate, and so exceedingly depreciate the corrupt inducements which impel a candidate to procure such an establishment as the present, the effect is very candidly acknowledged by the author of the Dialogue. 'A seat in 'parliament,' &c. now 'coveted at an expence which has often sunk our 'most opulent families for several generations: reduce that seat again to 'its former value,' &c.—'and you will *cut up bribery at elections by the roots.*' † These are the sentiments of the Crassus of the Dialogue, the character who represents the opinions of the author. In other words, the reflection amounts to this: reduce a seat in parliament to its constitutional tenure,

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ture,

* Even in favour of the freedom of an individual, the obligation of this rule is acknowledged as a maxim of law; and this principle was applied by Mr. Justice Willes, and admitted by the court, Tr. T. 14 Geo. III. B. R. to discharge, under the insolvent act, a party in execution for costs, on an attachment, though the construction, which most justly received this case into the benefit of the act, was not so directly deducible from the words as *sessional election* from the statutes of Edward.

|| Free Parliaments, p. 26 and 61. Dial. p. 40-43.

† P. 33, Dial.

nure, and opulent families will no longer have the happiness to be beggared in the honourable cause of propagating corruption. The people have more public virtue than the monopolisers of common right are capable of conceiving. To possess the reasonable confidence of others, and to exercise the rights of man in society, is to be placed happily in a state most agreeable to nature, most favourable to political and moral virtue. But some refused to baptize the miserable objects of their avarice and despotism, lest they should be obliged to treat them as religion and humanity require. And there are not wanting those who might perhaps ridicule the absurdity, and blush at the enormity, of that subterfuge, who yet can say, to every proposition of just reform, "*the people want virtue*," as an excuse for keeping them in want of every political and natural right of society. And yet it might well beseem many of these objectors to imbibe some part of that *virtue*, oppressed and darkened as it is, of which they dread the just and peaceable exertion.

The business of parliament would be of another kind in the constitutional yearly parliaments. Contested elections would go out of doors with their parent, bribery.* The *business of parliament* would not then be the *business of administration*: but, on the contrary, the USE of *parliaments*, considered as a controul on *administration*, would be potential rather than in actual exercise. The salutary fear of such a tribunal would keep ministers in awe, and restrain them from those acts which a parliament, *yearly to return to the people*, would have no power to protect, no temptation to overlook. Neither would canvassing to be re-elected take up so much time; the motives which stimulate to such practices are well known. A delegation thus limited, and bribery thus eradicated, the electors would not be hunted by candidates who are now eager in a pursuit which gives such ample returns to selfish interest and the depravity of ambition.

To suppose good laws would be lost, by the capriciousness of new parliaments repealing the necessary regulations of former ones, is ranging far in quest of conjectures. Members would doubtless, at the year's return, be well recommended to the people, who could only have to say, 'we have done the very thing which a house, independent of your authority and subjected to another will, naturally might have done. We have repealed laws which had, and merited, your approbation, because it was our will: we have passed laws which you justly execute; for such was our pleasure: for these merits, re-elect us. They are new in your memory and feelings; for we are created by your recent appointment: while the smart and insult are fresh, choose us now again.' When electors are to examine the course of seven years to judge of the conduct of their representative, the sum of the account may be well perplexed. Balanced at the end of one year, without those embarrassing articles which now obstruct the liquidation, the real duty

* In more than 200 years, from 49 H. III. to 22 Ed. IV. not above two or three cases of elections questioned or complained of, and not one double return. Prynne, *Brevia Parl. rediv.* p. 137.

duty and conduct of the member of a constitutional parliament would need a criterion to ascertain it no more refined than the simple *common-sense* of his constituents. If he is a servant of the crown and aristocracy as well as of the commons, if his character is to be determined by these contradictory relations, no wonder if he is right and wrong, and every thing at once. With yearly-elected parliaments, I believe, we should make fewer laws. I believe, too, they would be less redundant, less obscure, aristocratic, and sanguinary. And of the good laws, which exist already, we should better know the value; with more constancy, more efficacy, exert the use. Let it be recollected how far prorogations at present have an effect as to the dispatch of business: yet enough at least is done. It may be also recollected that the crown, at any time when it pleases, dissolves parliament; so that its continuance against the people they may justly dread from experience. Its continuing for any good purpose, from one day to the next, depends on the will of an individual.

And now on representation; which is so intimately involved with the other point, that it is necessarily, in a degree, anticipated by what has just been said. Our ancestors personally voted in the enacting of laws. We hear of multitudes, of infinite and innumerable assemblies of the people, by whose consent the laws of our Saxon kings were ratified and accepted. This was agreeable to the German constitutions.† Whatever may be the precise import of these hyperbolical expressions, they will not denote less than national assemblies, like those of Athens or ancient Rome. Enlargement of territory, and many obvious causes, changed the immediate into a representative suffrage. But still the idea of analogy was kept in view. Every freeman was present by a representative of his own choosing, if he appeared not personally. It is a maxim in the most ancient records of our jurisprudence. ‘*No man shall be bound but those who assent*’ is the language held in the year-books almost contemporary to the act declaratory of the right of annual parliaments.*

Whoever said the right of election was a distinguishing character from the vulgar† might have better said, it was that right of which the possession or privation stamped the character of free or slave. Away with the rubbish of chartered freemen, prescriptive freemen, free-men by tenure. He is an Englishman; the spirit of the constitution charters his freedom against Norman vassalage: he is a member of civil society; the social compact is itself his tenure of freedom: he is a man; his nature and its supreme Author justify him free from the dominion of fellow-men. Away with a frivolous representation, the idol of those ‘*theorists*’ who cannot see the true: useless, unreal, limited to an arbitrary standard of property which the fancy of every one models as he may be inclined: for, where justice and nature have not drawn the line,

† See note in p. 6. (Editor.)

* ‘*Nul homme ferra lye mes ceux que assenteront.*’ Livre des Assizes, 44 Ed. III. 19. anno 1370.

† P. 41, Free Parliaments.

line, the fallacious boundaries of *expedience*, in the place of *right*, are too weak to keep their ground; too unsubstantial not to fleet and vary for ever. If, as lord chief-justice Holt || has remarked, the right of electing representatives is not arbitrary, not the creature of fictitious policy, not a corporate, but a 'personal, a natural,' right, — we know where to find it, we know where it ought to be. If the constitution recognises the exercise of this right as inseparable from the character of a free Englishman, shew us the vassals to whom it may be now denied. Villanage, with all its horrid and disgraceful consequences, is banished: every man is acknowledged free: and it is confessed treason against the constitution to claim as a *slave* any human being on English ground.† And yet shall the nation, so small a part as the freeholders excepted, be retained in a *state of slavery*? The argument resolves itself into these simple propositions. The constitution gives *every man, who is free*, a voice in the laws by which *every man is bound*. Freedom is now recognised, not within the narrow limits of feudal invention, but on the principles of nature and society. Measure not the elective rights by a false rule equally inapplicable and unjust. A certain order of men was once unjustly established in that freedom which violence withheld from the rest, and were indulged with property on a certain tenure which rapine would not allow to any but her accomplices. If you will be consistent, when you deny men who are without this species of property their elective rights, deny them also the secondary civil rights. Subject their property and life to a private master; as you subject these and all which can be dear to them as citizens to public masters set over them by others. If the Norman bondage is removed from the individual, let it not oppress the community.

If the representation is general on the principles of the constitution, the same principles assert its equality*. What is the right of a member of

|| See the case of Ashby and White.

† Editor. See "*A Representation of the Injustice and dangerous Tendency of tolerating Slavery, &c. in England.*" Lon. 1769; and the subsequent judgement of the court of King's-bench on the case of *Somerset* in 1772. A full account of the latter, with its effect on the decisions of other courts, is given in the Appendix to "*the just Limitation of Slavery in the Laws of God,*" &c. N° 8-11.

* Note by the editor. "That the representation of the people is very inadequate is a truth universally believed: but, in what degree and in what proportion it is unequal," — the reader may have ample information in a short and well-digested state of it, intitled — "*FACTS, or a comparative View of the POPULATION and REPRESENTATION of ENGLAND and WALES.*" Doncaster, 1783. Sold by J. F. and C. Rivington, and J. Robson, London.

— It is necessary, however, to understand with due restriction one expression which several times occurs in this very useful and ingenious state of *FACTS*, &c. For instance, in p. 5, speaking of the county of Bedford, and the proportion which the number of its inhabitants bears to the total number in England

of society, generally as such, will not be double, treble, ten-fold, or a thousand fold, according to the nature and quantity of his possessions, the place he inhabits, or the corporation of which he may be a member; it will not hang on the charter of a king, or fluctuate in the votes of a house of commons; it will be an undivided, simple, and consequently equal, right.

And here I cannot omit to mention an error, which has countenanced that partial representation, the disgrace and yoke of this country, and has been extended thence by an easy analogy to the monstrous fiction, subversive of all equity of virtual representation to which we owe the convulsion that has torn from us America. It might not be difficult to trace, so far back as the time of sir Edward Coke, a jealousy of the two constituent parts of the house of commons, the borough and county members. To avoid this, it became a rule in parliament not to speak of an individual, in that house, as member for a particular place, but as member of parliament; just as, in the other house, an allusion being made to certain great peers, it was checked, and a suitable admonition given, that all peers of parliament are, as such, equal; and, in like manner, members of the house of commons being alike deputed, by their constituents, on the concerns of them, and of the kingdom, no invidious distinctions, between burgessees and knights, or the member from this or that place, could be allowed; every representative, whencesoever chosen, being entitled to equal consideration as a member of that body who collectively were to represent the nation, though, at the same time, this equality of power is an argument for an equalised delegation. Hence, I apprehend, sir Edward Coke has remarked, 'though one be chosen for one particular county or borough, yet, when he is returned and sits in parliament, he serveth for the whole realm; for his end of coming thither is general *.' And this undoubtedly is true, within its just meaning; since the business of his constituents is the business of the nation, in which they have a common interest; but, from this simple truth, how many and what alarming consequences have been wrested by an unhappy ingenuity; that every member represented the whole kingdom, whereas lord chief-justice Coke, with his

England and Wales, he informs us, that it is "*adequately represented in proportion to its population*:" which, arithmetically speaking of the inhabitants, without regard to the actual *electors* among them, is certainly true: but, as the fatal act of the 8th Hen. VI. has excluded the *inhabitants in general* from voting, as formerly, in the county-courts, and has lodged the power of *voting for knights* solely in the *freeholders*, we cannot say that either this county of Bedford, or any other, "*is adequately represented*;" because the inhabitants, as such, have no voice, but only a *few* that are freeholders; and the actual number of these *few* (or this oligarchy) is so far from being *in proportion to the population* of each county, that the proportion of it notoriously varies in different counties. That act of *iniquity* must therefore be repealed, or deemed *null*. before the representation of the counties can be regulated "*in proportion to their population*." Editor.

* 4th Inst.

his usual accuracy, calls him chosen for one county or borough, and says not that he represents, but that he serves for, the whole realm; for the same reason that his constituents, if personally present, would have a right to deliberate, not merely on their separate business and local inconveniences or interests, but on those of the community. Again, it has been inferred, which the first wrong conclusion necessarily drew after it, that all representation on the footing of equality, or general choice, was needless; for, if every individual member represented the nation, those who could not vote at his election, as being neither burgesses nor county electors within that county, no less than those who did, two electors might as well choose this general representative as two million. Next, that he could be bound by no instructions; and yet, if representation were established in its just equality and extent, particular instructions would have their due weight by expressing, so far, the suffrage of the community of which, if the instructors were the minor part, they would of course be outvoted. And then, to crown the whole system, (built upon the shadowy basis we have seen,) every member was to be acknowledged the representative of every part of the dominions of the crown; so that it was to be perfect freedom to receive laws from a most defective delegation of a people, who nationally could have no right to bind others than themselves, and, by the whole body of whom, to have been compelled to submit to laws, could the nation, as one man, have enacted them, would, by consequence, have been perfect slavery. To remember none are free who vote not in the making of laws, either personally or by representation, and that none are represented by those, whom they could have no share in electing, is to remember first principles of order, and peace, and freedom.

What then shall we say of the 'mad and wicked measure,'† as it is called, of giving every man his own? Why, that it is called mad and wicked by the same figure as the parliaments, delineated by the author, are complimented with the name of *free*. It would make all elections tumultuous and outrageous. If it were proposed to exclude the present voters, as all others are now excluded, tumult and outrage might naturally be the consequence; as fraud and corruption are intertwined in the present exclusive system. But the participation of high and low, in the common exercise of equal right, would prevent *corruption* by rendering it vain, and *tumult* by the sense of common interest and real union. The excluded many are natural enemies of the usurping few: the observation is that of Aristotle, no ordinary judge of human nature. Let the author of Free Parliaments please himself by supposing, that 'no persons of decency would attend such elections; that they would be constantly made by the lowest of the people who lived in or near the county-town.' Yet no Venetian refinement is necessary to render elections, by five times the present number, more orderly, more convenient to the voters, than they can be at present.* It is only to appoint

† P. 42, Free Parliaments.

* See Major Cartwright, in 'The Barrier against undue Influence.'

appoint several places in which the inhabitants of a county, or even of a populous city, should severally assemble according to their respective districts. You would then save much expence, time, and trouble, to voters; much inconvenience to the honest candidate. You would secure order and tranquillity; you would have a check on corrupt returns; and, in the second year of annual elections, no more dread would be left of difficulty or disturbance than our ancestors felt when the cautious act of H. VI. for want of actual ground from experienced inconveniences, disfranchised the commonalty of England in provident consideration of something which they represent '*very likely to rise and be, unless convenient and due remedy be provided:*' namely, by making free with the constitution, as if they were not bound by it themselves, and paring down the rights of the people till they should become manageable by '*the worthy knights and esquires,*' with whom these '*people of no value*' had the audacity '*to pretend equal voice*' in the election of their common representatives. Had the act in question been in favour of the community, we should have heard nothing from its present champions of its inviolable authority. Glaring as the infringement on the constitution was by the septennial act, this they can resolve into the right of parliament, the wisdom of the legislature. But, should the nation, from whom alone parliament has all its authority, — should the nation testify against the oppressive statute of H. VI. it is a wise, a salutary, statute; and the nation must be instructed to adopt the animated apostrophe of American patriotism; to contend for *slavery* as zealously as *they* for *freedom*; against the rights of representation as firmly as *they* spoke and acted, in maintenance of those rights, against the sophistry which told them they were *virtually* represented. Is the parting with this statute of disfranchisement '*laying the foundation of miseries*' inexpressible? When it was enacting, then our forefathers should have cried, § '*shall we look tamely on, whilst the yoke is fixed on us under which we must for ever groan?*'" By declaring the nullity of this statute, * the yoke would be removed. As to the idea, — of laws and grants

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§ — — Nunc te fata impia tangunt :
Tunc decuit cum sceptris dares.

|| P. 38, 'Free Parliaments.'

'As to the statute of HENRY VI. which is ridiculously supposed by some to have fixed what they call *the constitution*, I only wish that ancient history had preserved, what modern history must have branded with infamy, the names of those who advised such a law, of those who prepared the bill, and of those who supported it. The true design and dark policy of it, which had, I confess, escaped me, were lately detected, in my hearing, by one of the wisest and most discerning men living, who remarked, "that the statute, for disqualifying all voters for counties, who had not freeholds of twenty pounds a year, according to the value of money at that time, was *immediately* followed by another, compelling *labourers*

grants of property, in which the people have acquiesced, being overthrown, if the disfranchising-act and the unconstitutional extension of the period of parliaments were disallowed,—it is too extravagant to expect an answer.

The people may be reviled for not distinguishing between William and James: for myself, I must acknowledge, with our truly constitutional historian, that I wish the authors of the revolution had carried their views beyond personal distinctions more than it appears they did. Between a settled constitution and one left to the inroads of influence, from the very person chosen to protect it, the people might have felt a difference: between the bigotted enemy and the cold friend the difference was not so advantageous. The people, too, might have our excuse, if they thought the difference between Nero and Antoninus amounted to a mere grain upon the scale, in comparison of a difference which is to be present to a long series of successive generations; the difference between a permanently free, and a precarious, defective, constitution.

A few words on the separate arguments of the *Dialogue*.

It should seem, by that refined expository of state-mysteries, the merit of the representatives of the commonalty depends, as before observed, upon their not representing the commonalty. In this theory, the perfection of freedom is, that the house of lords so depends upon the crown, 'that ministers, of whatever description, can prophesy the decisions of that house upon political questions with a most unerring certainty.' Judging from phenomena for a course of years, this account was equally applicable to the other house. The moment in which appearances were changed argues the independence of one no more than of the other.

Let us see his account of the house of commons. From an advocate for the present establishment it will be better relished than from one whom the anti-reformists would call a misanthrope, a republican, an idiot,

"*bourers and artificers*, multitudes of whom were freeholders under that value, to work at certain low wages, on pain of a heavy fine." "If I recollect," said a learned man in the company, who had accurately studied our history and constitution, "the statute of *labourers* preceded that of elections by a year or two." "Then," said the other, "it was feared, that the lower freeholders, who were injured by a cruel law, would shew their just resentment by voting against the supporters of it; and the surest way of preventing them was to disqualify them all at a blow." — "You are both right," said I; "for a temporary act, concerning workmen and artificers, passed in the *sixth* of that reign, which it was thought politic to make *perpetual* in the *eighth*, and the disqualifying statute was contrived to intervene." We all concurred in expressing our wonder, that so violent an abuse of power did not provoke, what it would unquestionably have justified, a general insurrection." Addition, by the editor, from p. 18 and 19 of 'A Letter to a patriot Senator.'

|| Dialogue, p. 15.

idiot, † a speculatist, a designing knave, a subverter of all governments:‡ for all these epithets, however ill assorted, compose the eloquent invective which is to cover their opponents with shame and confusion. We are first told, that the house is far from consisting of those principally whom by its title we should imagine to compose it. To confirm this truth, we are let into the secret of what it does consist. ‘A very few considerable merchants, mixed with those who have every title to be ranked in the patrician order; a few ambitious lawyers; a great many sons and younger brothers of peers; country gentlemen of decent fortune, with some few men of parts introduced by influence.’* This is the grand machine; the image of that august house, on which the author of the *Dialogue* has discovered the crown and peerage to be dependent! If it were so, nothing would so much remind us of the speech of Themistocles to his son; when the parent told his not very promising boy, that he was the greatest man of the state: for he governed her, who governed Themistocles, and Themistocles the Athenians. For what does an assembly thus constituted promise, but the passions, the want of knowledge, the want of consistency, the pride, folly, and mischief, of a spoilt child? Yet presently we are told of ‘the vast increase of patronage in the crown, which augments with the distresses of the country.’‡ Was it not this controuling house, this sure restraint on bad ministers and bad measures, which made itself the minister of the system of distress? And to what are we to fly? to large possessions, hereditary privileges, family connections, for refuge from this distress? These may indeed stand between their owners and the crown; they may deprive the crown even of its constitutional prerogative. But how will they protect us from the abuse of prerogative? how will they secure us against their own abuse of power? The horse was bridled by the man whom he took upon his back to enable him to expel the stag. ‘Confusion, mutability, inconsequence, of popular ‘assemblies,’ are finely contrasted with ‘every thing that gives consistency, strength, and consideration.’ Look for the proof to an eight years war with America, founded on pretences the most disgraceful that ever sullied the honour and justice of this country; prosecuted in a manner worthy of such an origin, and with such its natural consequences as to render it matter of exultation that we have not been sunk into utter ruin: a nation so very lately the most revered on the globe. And now we are desired to look back, not with repentance so much as pride, upon the wreck;|| to look on ‘the fleets we have equipped’ in a new crusade, which makes the blindness or frenzy of superstition appear comparative prudence; a crusade against our own commerce; ‘the wealth and resources we have lavished in alienating those resources ‘which spontaneously flowed to us,’ the ‘armies’ we have ignominiously consumed;

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† See the *Dialogue*.

‡ See ‘Free Parliaments,’ in almost every page.

* P. 23, *Dialogue*. † *Dial.* p. 48-9.

|| *Dialogue*, p. 2-3.

consumed; the blood of the empire which we have drained in a contest whose total disappointment of the object and the immensity of our loss are a less evil than the proposed success. Eloquence, reasons, facts, weighed nothing. The mischief was at length, indeed, its own cure. Exhausted, but not satiated, the ministry retired: to leave their successors the enjoyment of an enviable office; the pilotage of the wreck. Necessity, and not the house of commons, — the sense of the nation, awakened by continued intolerable sufferings, — drove them from their seats. But can this efficiency of the people, so late, so dearly, purchased, compensate for the absence of that energy of their will, that habitual veneration of their authority, which, in a well-ordered system, would prevent calamities in their source? But let it be remembered, that, in the house of commons, a man, whose relation to the peerage could neither give nor take away consequence; a man, whose transcendent abilities, zeal, intrepidity, supplied the place of hereditary fortunes, and conferred a weight which he never could have owed to these, had he retained and accumulated with unceasing avarice; a man, uncomplying, by no means of an insinuating deportment; a man, who owed his popularity not to promises, but to actions; elected, in the center of ministerial influence, by one of the most numerous bodies of the nation. This man, while the boasted patrons of our freedom, the proprietors of vast possessions, partly aided the fatal torrent, partly opposed it with vain and feeble struggles, this man was conspicuous in the first rank; the object of dread and hatred to the ministerial phalanx. Yet not even this man, or many more, could they have been found in the house, would have prevailed against that influence which gave way to nothing but necessity and the public voice; a voice they had long affected not to hear, or to despise. The idea, that the minister held his seat so long, not for want of vigour and independence in the house, but because he was a good-natured inoffensive gentleman, whose indolence and apathy were only prejudicial to the public, is truly curious. But what shall we say of the wild assertion of the principle of the American war being justly popular to the feelings of every unprejudiced Englishman. Never was the name of Englishman so opposed before to the sense of humanity and justice that should belong to it.

In relation to that part of the house which is brought in by influence, (if to call it a part be not an arithmetical solecism,) whether that influence be family or of the treasury, the idea of the advantage of private boroughs may be somewhat different in the minds of the good people of England from that which either tract under consideration professes. They are in the nature of private closets, we learn, in St. Stephen's chapel; for the accommodation of 'gentlemen from the East and 'West Indies,' || who, with all their great property, might not otherwise be chosen in free and full election, where a resident would be preferred

ferred to these deserving strangers. Another benefit suggested, and rather fitted to make us smile than to excite indignation, is the opportunity which these pocket-boroughs afford of letting young gentlemen into parliament† to study their line of conduct by the information and examples they will find in that school of virtue: their abilities yet unknown to their county; their principles yet perhaps to be discovered by themselves, who may not in general have found leisure to resolve upon the choice of Hercules. This reminds one of the remark of the king of Prussia, how much earlier the wisdom of an English, than that of a Roman, senator was matured. And here shall we be told of phænomena; of exceptions to the ordinary course; of comets in the political heavens. There is a certain period before which the luminaries we are accustomed to observe do not appear to us sufficiently enlightened for the office of reflecting light on millions; or sufficiently confirm us against the dread of eccentricities. Their first crescent rays are better adapted to the observation of philosophy than to the view and benefit of the public. Still, if there are young men who have given proof of wisdom and virtue mature before the time, let not that proof be dishonoured by taking advantage of these by-ways into the house. To such the great door is open, if elections are only on their proper footing.

I cannot be so polite as to blush at the list of places said to have excused themselves from being represented.* Many of them, I believe,—most, if we may judge by their present numbers,—would have injured their country by retaining a separate representation. If there is cause for blushing, it is that the other petty boroughs (those best parts of the representation, in the idea of the *Dialogue*† and the tract on *Free Parliaments*||) have not followed the example. But the difference is wide between paying and receiving wages.

We may be told,—till we can hear of nothing else but money, money, money; as if parliament were an exchange, or the shop of a Jew-broker,—of the vast advantage there would be in raising the qualifications of electors. One looks to the tables, and calculates the difference: if forty shillings freehold makes freedom in the days of Henry VI. how much will it cost a man to be free in the reign of George III? He must be worth a freehold, one says, of twelve pounds; another, of twenty; another, of forty. Another finds fifty or a hundred will only raise prospects which never could tempt the mind of the humble labourer; and which may be the more easily bribed as the selfish hopes and fears become more accessible. The dependents are not those chiefly who seek their bread by industry. Attempt to shut out dependence proceeding from the false appetites of mankind, by rating their circumstances and regulating their political rights accordingly, and you will find

† Free Parliaments, p. 67.

* P. 73-4.

† Dial. 33.

|| P. 66. "It would be better" (he says) "if all the boroughs in England were in private hands," &c.

find it the same task as overtaking the visible horizon, which for ever opens as you advance. Another fears for the qualifications of members, who might go out of his closet, and look on life, and see men, fenced with princely domains, glittering with the treasured spoils of exhausted nations, at whose obsequiousness a cottager would blush: who, for a pittance, a feather, a ribbon, or a place, a title to stamp fashion upon the bullion, or any such worthy motives, are the most tractable of creatures.

You might almost as well look for moral or philosophical, as for political, independence, in these externals. Small bodies of men will ever be unsafe bulwarks against corruption. The frequency, the fulness, of the exercise of elective right, can alone multiply the difficulties and diminish the motives of corruption, so as to secure us against the most insidious and only fatal enemy of freedom.

At the *Constitutional Society* a dart is aimed,* which must fall idle and break without the vestige of an impression. Their reproach is, that they think the right and information of the commonalty at large of importance to the state. If the 'holders of such immense property can 'put a confidence in parliament,'† why should not the artisan or the common people? That is, in plain English, if 'the holders of immense property can put confidence' in themselves, what occasion has the body of the people for security or rights? Let them be content that they exist under the protection of their masters. In that society there are men 'conversant in public business,'* if distinguished members of both houses can be allowed that description; considerable merchants; gentlemen of independent fortunes; men, who do honour to respectable professions; and, what is most essential, approved integrity and public spirit, stand there in the place of influence and party. Their distribution of tracts, tending to inform the people of their elective rights, may be represented as 'too much for philanthropy'‡ by those who would rather find any motives than such as are evident; or by those who doubt the existence of such a virtue. To such men reason would be impertinent; and conviction a guest too unwelcome to be admitted.

Of the author of the *Dialogue*, who reminds us, in concluding, not to put ourselves to death for fear of dying, I will take my leave; only reminding him, that life, to nations as well as individuals, is not to be valued as mere existence, still less for being a series of wretchedness and shame. That one disorder palliated by another, or exchanged for a worse, — a fever for a palsy, the paroxysms of the gout for an apoplexy, the plethora of redundant health for a consumption, anxiety absorbed in madness, or remorse drowned in habitual error, — that these are *not* LIFE. But the exercise of all the functions of health, the use of the intellectual and moral faculties—these *are* LIFE. The LIFE of nations is *not* in the influence of monarchy, aristocracy, or oligarchy; but in *public freedom and virtue*.

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* See Dial. p. 55. † 'Free Parliaments,' p. 77.

‡ Free Parliaments, p. 77, 78.

To this investigation of the right to annual, or, with more accuracy, sessional parliaments, and an equal representation, it may not be improper to add a few remarks in reply to a gentleman who appears not much disposed to question the right, but rather the efficacy, the expedience, and practicability of exerting it. Now, though it might be sufficient to say that a general right must naturally be practicable, expedient, and efficacious, in the exercise, when adopted in its extent, and can only be made difficult, ineffectual, inexpedient, by a partial application, the importance of the subject seems to demand an attention even to the prejudices opposed to it. In looking upon the author's title-page, and observing neglected 'Representation,' the only part not honoured with capitals, an expectation was raised of seeing a large discussion of the merits of septennial or triennial parliaments, which figure in front with all the grandeur of the press. But all that I have discovered, concerning the duration of parliaments, is comprised in little more than twenty lines*, referring us, for ampler satisfaction, to the gentleman to whom the letter is addressed†. The question, of frequently-elected parliaments, is represented as hardly worthy of the brief notice given to it, since this frequency of election is but '*an Appeal to the People*;' and, we are told, without the walls of St. Stephen's, and within, prevails a similar influence, operating on the mass of the nation, that experience shews us little to hope; that the list of county members became but little more favourable to the cause of freedom by the last election; that every honest and sober member would be drawn from the house by the expence and disgust; that it would weaken the hands of ministers where they should be strong, and strengthen where they should be weak. This last political enigma, I learn, proceeded from a member of parliament, whose abilities will induce me to respect what I am enabled to understand: but really I think, when we talk of parliaments and frequent elections, we need not be apprehensive of making ministers too weak; for they will have nothing in such parliaments to controul them but what always should: nor do I suspect their self-denial to be so very great as to have hindered them from establishing annual parliaments, long since, from the fear of thus acquiring more strength than was reasonable.

I take it to be a fact, capable of such sort of proof as points of the like kind generally admit, that the cause of freedom was somewhat advantaged by the choice made, in the several counties, at the last election. Yet hardly should the people be expected to contend for the restoration of this right, and for the much greater advantage of frequent elections, if the reform of the representation were to be no object of their pursuit. With an equal adequate representation, frequent returns of the delegated trust are highly necessary to preserve the purity of the constitution and to give the full enjoyment of the elective right: but with a partial, defective, representation, the rotten part of the constitution

* P. 4, 5.

† John Sinclair, Esq. M. P.

tution would return, annually or monthly, the same members; and the founder are too enfeebled and mutilated to insure much national benefit from the frequency of an appeal; which when made, at present, may well be of very limited or doubtful efficacy; not only from occurring so rarely, but because, even when it does, *it is not made to the mass of the people*; of whom, perhaps, not above one man in nine has any vote; and whose votes, such as they are, may be at any time outbalanced by members sent by less than a thirtieth part of their number. So little power accrues to the freeholders of forty shillings, from the disfranchisement of the nation; that stripping the body of the people of the very shadow of right has reduced the county electors, with those of cities and great towns, in the place of their just importance, to possession of but a shadow.

This leads me to the author's reasoning on Representation. He cannot have the idea of a *complete*, which is not an *equal*, Representation*. Indeed any man that could must have the faculty of perceiving contradictory or self-repugnant propositions to be both true. Nor can he acquiesce in the partial adoption of a principle, which must either be rejected as impracticable, or admitted, in practice, agreeably to the extent it carries †. Here again, there is no controversy except on what should be meant by *equal Representation* in a constitutional and consistent idea, and the practicability of establishing it. Here the author seems to have erred, by supposing no other equal representation could be attempted but one which should enormously add to the number of the house of commons; and which, after allowing each individual his vote in county elections for the choice of four hundred members, should appropriate to the commercial four hundred more ‡; and he therefore calls on the friends of equal representation to adjust the share of the bank and E. India company; a plan of most curious invention, and elaborately perplexed! but happily not the plan, upon the settling of which the fate of equality in the elective rights can depend. The trading companies have their own internal regulations which they may conduct within themselves by such delegated powers, to individuals of their body, as are consistent with law and the public policy of the nation. But in a national view these companies have no claim to be represented in parliament any more than the profession of the law or of physic. If the individuals throughout the kingdom are completely and equally represented, the nation is represented; and the individuals of those companies of course. If the inhabitants of cities and great towns, where the number will amount to the choice of a representative on the scale of equal proportion, choose, separately, one or more representatives, they will have the power of choosing those whom they judge faithful and understanding guardians of their several commercial interests; and, for the inhabitants of smaller towns, the proportion of their population would regulate their share towards the choice of a representative. Equal representation will not admit of an estimate founded upon property;

* See P. 5.

† See P. 1, 2.

‡ P. 15.

ty; it is merely and simply a right belonging to the person. For this reason, I apprehend a gentleman,* whose abilities all concur in acknowledging, and whose firmness I revere yet more, was mistaken in proposing double and treble votes, and so in proportion, to be incidentally given according to the property of the elector, when the persons, whom his plan makes the original electors, should not constitute a number requisite for that purpose. In this, and in taxing them for the exercise of their vote, I think he erred. I see no more reason to encrease the votes, as the property of an elector is greater, than to give one staff to an infirm man, to support him, and two to a strong one. Wealth, in political society, like personal strength and activity of mind in a state of nature, is power in itself; but as the personal endowments are restrained in civil governments from oppressing those who, without social protection, would be unable to resist, still more should the possession of superior property, which depends on society for its existence, be kept within the limits of legal and safe enjoyment to the possessor, without being permitted to encroach on the common rights. Still less should its owner be invested by act of the society with more than his single share in electing representatives, which is but a secondary mode of exercising that social power, which men, by consenting to civil government, are so far from surrendering, that government without it has no foundation or just end; the power of regulating, by common consent, what may be done and what shall be forbidden in the society. And on this I must observe, that the practice of voting for a freehold in every county where a man may be possessed of one, and other inequalities of the like kind, are totally incompatible with the just, simple, constitutional, idea of elective right. Persons resident and commorant within the county were the constitutional electors, and were not entitled to vote by holding freeholds in other counties. This equality Major Cartwright,† in his admirable reasoning and distinct plan, endeavours to restore.

But, after having released us from the intanglements of representation of property, which is foreign to the true idea, the author of the letter to Mr. Sinclair avows his dislike of popular elections, which, however, he acknowledges to be the mode of representation 'most in fashion.' In the course of fashions, then, even justice may have its turn. May it be, and remain, in fashion, and the liberties of England are immortal! He acknowledges, they are, in theory,‡ the '*purest and most perfect*,' but yet insists on their being in the most eminent degree the rotten boroughs of the constitution: and that they OUGHT TO BE ABOLISHED WHATEVER BE THE NUMBER OF VOTERS AMONGST THEM; BEING UNDER NO INFLUENCE OR COMMAND WHATEVER. I shall not abuse the patience of my reader, by arguing on this doctrine. If it be not refuted by simply stating it the virtue of influence and the evil of free elections must have taken such root within the mind as evidence cannot shake. The

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* John Horne Tooke, Esq. in his Letter to Lord Ashburton.

† See his Barrier against undue Influence on the Commons' House of Parliament, according to the Constitution.

‡ Letter to John Sinclair, Esq. p. 25.

most numerous, and consequently freest from influence, being thus rejected, the author very logically proceeds to prefer the smallest number and most influenced voters, one species of undue influence excepted; that of the crown; for with those who are in the influence of the established aristocracy, or of the flying camp of the monied men who will be faithful to the aristocracy while it is the strongest,—with influence in these hands, he has no quarrel. Nay, if no enlargement of the oppressed elective rights be admitted; if the favourite strong holds of the aristocracy be preserved inviolate; if no boroughs, however paltry, however dependent, be put on a more equal and extensive footing; and nothing be attempted but the demolition of those boroughs which are at the disposal of the treasury, and at all events the annihilation of the few, which by popular election are yet reserved to the people, he can approve, upon these conditions, the adding of a representative to each county: not upon the principle of equal representation, (which indeed it was superfluous to tell us it could not answer,) but because it would be a valuable acquisition to the house of commons, by adding men of considerable * landed property or importance. That is, to translate agreeably to the constant purport of the letter, we are to strengthen the aristocracy too strong already; we are to weaken popular elections, already miserably despoiled of their due strength. But can we forget that our real duty is to oppose ourselves to the influence of ministers on the house; of the aristocracy, and of a new species of oligarchy on the house of commons; to every influence, in a word, but that of their constituents?

Before I quit this subject, I feel a kind of necessity, not without regret, to take notice of some opinions published in a '*Sequel to an Essay on Government*.' The writer of which appears to think our representation was originally (I mean in the Saxon times) very limited and even hereditary †. Hereditary representatives would be a contradiction in terms. The author of the historical essay on the English constitution, gives a very different account, an account of annual and general representation; the yearly magistrate, chosen by the inhabitants of each tithing, was also, according to that judicious and circumstantial investigation, the representative, for the year, in the county parliament.

The author of the sequel supposes, that the expence would be enormous in taking the poll if the elective rights were liberated from the arbitrary restrictions which now confine them. He affirms the present expence of a county election, without a single bribe, to be ten thousand pounds; surely such a burden on elections can meet no idea favourable to purity and independence! This appears a strong additional argument for voting by districts, § which must incredibly diminish all fair expences.

It is, sure, an erroneous position to say that it is matter of speculation and form ‡ to insist on each man's partaking in the elective right as necessary to political freedom. This participation makes not the speculative
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* P. 19.

† Sequel, p. 35.

§ See Major Cartwright's Plan annexed to the Barrier, and see the Report of the Westminster Sub-committee.

‡ Sequel, p. 38.

or formal, but the practical, substantial difference: that men should be 'governed by wise laws made by good men' is true*. But, supposing the laws wise and the makers of them good, are they free who are thus governed without consent? Is this liberty, to depend, not only on the prudence and virtue of those that are strangers to us; but to rely, for the knowledge of our situation, our wishes, our inconveniences, on men, chosen by those whose interests may be very different from ours? Not liable to be rejected on our being dissatisfied with their conduct? In short, masters of our lives, properties, and freedom! Who is to determine the wisdom and goodness of the laws? Those who are to reap the benefit or to suffer the mischief? Lawgivers imposed upon all, by the choice of a few, if they act at any time moderately and prudently, the slavery of a people is palliated, but the serpent is a serpent still. The nature of despotism is not changed by a temporary, precarious, mitigation of its effects. Those only are free who have their freedom in their own custody.

I return to the letter to Mr. Sinclair, and conclude. In that letter it is argued, that first principles are safe and good arms against uncontrouled power in the hands of one; but when things are 'settled in an established order†,' when it is no longer the frenzy of a tyrant, but the systematic oppression of a government, bearing the forms of freedom, then nothing can be so dangerous as abstract reasonings. America is instanced, and the consequences of examining into the principles of representation are suggested as motives to determine us, not to see at home, what it is scarcely any longer possible to avoid seeing. Just the reverse. The principles of representation were falsely and partially assumed. The feelings and experience of America forced them to confute a theory which practice so exemplified. Sound principles therefore ought carefully to be formed and religiously retained, or we shall multiply errors and perpetuate calamity. It was not the principle of representation that lost all we have lost; for that, like every principle of truth and freedom, is a preserving, uniting, principle. It was not our discovery of its nature by which we suffered, but our rushing into action without staying to be guided by it.

And, as no defence of the right of equal representation, no proof of its being certainly and with ease reducible to practice, can be stronger than the conclusion of the Letter to Mr. Sinclair, I shall rest its support on that account of it, which no one can suppose to be partial in its favour.

He says, then, of the inseparable dependence of legislation on representation, and of the exercise of that right to be repeated by the community as often as they think proper, — that, however difficult upon other subjects to know the opinion of the people, yet upon these subjects it is known before we ask it; ‡ for that all men who are excluded from power are too happy to be admitted to it. And we might suppose, that, whether the secondary power should limit that primary authority of the people, or be limited by it; whether the representatives

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should

* Sequel, p. 38.

† Letter to Mr. Sinclair, p. 29.

‡ P. 35.

should exclude the body of their proper constituents, or promote their reinstatement in the choice of those who are to act for them; whether they should do for the people what they know must be the universal wish; must be points the easiest imaginable. More especially when this acknowledgement is followed by another, that equal and complete representation is founded upon unanswerable arguments which appeal to the most obvious maxims of common sense and interests in unison to the breast of every Englishman. Well may it be supposed, as it is immediately after, that, if permitted to have the sight of these objects, they will not be content with the partial suppression of a few rotten boroughs, and the addition of a few knights of the shire partially chosen. My heart vibrates with an honest triumph at the thought: it is my hope, my expectation, that the reform now to be deliberated cannot fall to nothing: which it must assuredly, unless its nature and extent be regulated by those principles which opposers themselves acknowledge unexceptionable in the idea, and to which the general interests of the community will ensure reception. If we purpose to avoid disappointment and confusion, may the wisdom and justice of those immediately concerned avoid partial reforms, not founded in the principle of representation, or at least grossly incapable of answering its end: and which can only tend to produce collision of partial interests; to exasperate rather than heal our wounds. That simple, comprehensive, plan, which shall 'GIVE TO EVERY MAN HIS RIGHTS,'—to use the words of a nobleman faithful to the cause of the community in the most eminent and exemplary degree,—that plan would naturally be attended by unanimity as to the great body of the people; for none, not even the lowest compromise, will satisfy every selfish interest; but this, from its nature, its clearness and comprehension, its congeniality to the constitution and the hearts of Englishmen, must confessedly unite the most, and offend few, or none, but such as, at every attempt of reformation, must of course be offended. Peace would accompany its progress: for such, as would oppose, to a new, defective, and still partial, system, the claim to keep possession of their old abuses, would, the least corrupt of them, cease from the wish; and who of them would expect to be supported against the felt and acknowledged right animating the general mind, and constitutionally declared by the voice of the people? May the honour of the whole legislature, which is concerned in the purity of any of its constituent parts, and of this more than any, because a disease here affects the remedy of every other disease; may the dignity and independence of the representative body, the spirit of the constitution, the justice due to the name and rights of Englishmen, prevail! May the great principle of social union, the characteristic of our political establishment, be restored to exercise; government acting by the resort, not of partial influence or force, but by the free, equal, unresisted, movement of common consent, through legislators constituted by general election; renewed with that frequency which excludes corruption after the choice, as the full exercise of the right must exclude it in choosing. We shall then contemplate

plate a constitution, which, while it protects the individual from every power but the laws, protects the community from the oppression of the law itself; by deriving the awful functions, on which all depends, from their proper source, through a delegation just and complete!

I might have been more particular and more correct. I have omitted many things in both tracts, and in the other publications which are incidentally examined, which have been repeatedly answered. Some I have thought too plainly groundless for a particular answer: such as the war which lords of manors are invited to levy, if parliament, or the nation, should presume to emancipate copyholders; and such as the sacred birthright of the petty boroughs, like the old right-divine of our kings to do every wrong to their subjects. If such boroughs are the constituents (unhappily for the nation, and against all public decency and right) of the present house of commons, they are not the constituents of the people. If they must be paid for a pretended property in the liberties of the people, (a property which but to name is to state the grossness of the injustice and the utter invalidity of such a title,) let them be paid. Let them afterwards vote as individuals on the only fair terms of equal suffrage.

It may not be material to the public to know the name of the writer of these pages; but the writer thinks it his duty to give this pledge of his sincerity, and this mark of responsibility for any errors he may have committed. Time and leisure would have made what he submits to the public more correct: but he cannot think himself warranted to prefer the reputation of style to the hope of being instrumental to the improvement of the present crisis; believing that delay and indecision are the only enemies we have reason to dread.

Though my name may not aid, I trust it cannot prejudice, the cause; and I subscribe myself, with the most sincere esteem to every friend of freedom,

Their fellow-labourer,

Troston-hall, Suffolk,

14 Feb. 1783.

CAPEL LOFFT.

P. S. It may not be improper to observe, that, although the house of commons anciently consisted of men more properly related to the name and end of its institution, instead of being composed of the aristocratic and regal interest, with scarce a tinge of the popular, (which is now made the description of the house, and I believe justly,) yet, though properly of the plebeian order, and not possessing the aristocratic property of the barons, they were sufficiently considerable for the proper object of their appointment, without the idle restriction of qualifications, the ill-devised palliative of a corrupted constitution. Country gentlemen, who were then elected into the house, could not well be possessed of that immense property which would place them on the patrician range detached

tached from the plebeian interests. But we have the authority of Browne Willis, in his preface to the *Notitia Parliamentaria*, that they were ever in the 'counties chosen of the principal gentry;' and that the citizens and burghesses returned by the towns were of the most eminent merchants in their respective communities, an interest at that time most peculiarly popular. It is indeed apparent, from fact, that the popular branch of the constitution was early and long predominant in that house, (as it ever ought to be, for how otherwise is it the house of the commons?) and, by this prevalence, we obtained whatever is valuable in our constitution; by this our ancestors ere fled, and long maintained, a successful barrier against regal and aristocratic influence. That barrier now indispensibly requires a re-establishment of strength from full and frequent elections. See the Letter annexed to Sharp's *Annual Parliaments*.

THE END.